United Nations CCPR/C/SR.3496

International Covenant on Civil and Political Rights

Distr.: General
10 July 2018

Original: English

**Human Rights Committee**
**123rd session**

**Summary record of the 3496th meeting**
Held at the Palais Wilson, Geneva, on Thursday, 5 July 2018, at 3 p.m.

*Chair*: Mr. Shany

## Contents

Consideration of country situations in the absence of reports, pursuant to rule 70 of the Committee's rules of procedure

*Situation in the Gambia considered in the absence of a report*

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*The meeting was called to order at 3.05 p.m.*

**Consideration of country situations in the absence of reports, pursuant to rule 70 of the Committee's rules of procedure**

*Situation in the Gambia considered in the absence of a report* (CCPR/C/GMB/Q/2 and CCPR/C/GMB/Q/2/Add.1)

1. *At the invitation of the Chair, the delegation of the Gambia took places at the Committee table.*

2. **Mr. Marenah** (Gambia) said that, in support of the country's transition from an extended period of autocratic rule to democracy, the Government had begun a series of major reforms to realign the architecture of the State with the human rights aspirations of the nation. The primary reform would be to the constitutional order, to which end a Constitutional Review Commission had been set up and tasked with drafting a new constitution based on human rights and the rule of law.

3. Institutional reform was also under way. The Government had inaugurated a Truth, Reconciliation and Reparations Commission to establish the facts of the human rights abuses of the previous two and a half decades. In parallel, the first National Human Rights Commission in the history of the Gambia had been established and the appointment of its members was under way. The Commission would be autonomous and fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

4. Two further areas subject to major reform were the criminal justice system and the security sector. The State party planned to bring its criminal law in line with international standards and had begun the process of entrenching a robust, independent judicial system. In tandem, the mindset and standard operational procedures of the national security forces were being brought back into line with international best practices.

5. Lastly, in a push to renew the State party's international human rights commitments, the National Assembly had begun the processes of acceding to and ratifying several international treaties, including the Convention on Enforced Disappearance and the Convention against Torture. Cognizant of the renewed reporting obligations that such commitments entailed, the Government had set up a permanent Inter-Ministerial National Taskforce on treaty reporting, through which the Gambia would report on its progress towards meeting its human rights obligations and the challenges it faced in its endeavours.

6. **Mr. Heyns** said that he wished to know whether the language of the Covenant would be incorporated into the bill of rights of the new constitution. Moreover, the Government might wish to address the references to the death penalty in the existing Constitution, in view of the current moratorium on that penalty and its signature of the Second Optional Protocol to the Covenant. The delegation should also clarify the status of the Covenant and international law in the domestic legal order. The status of the State party's ratification of the Second Optional Protocol to the Covenant should be clarified, and he would welcome an explanation as to why the Committee had received so few communications under the First Optional Protocol.

7. It would be useful to know whether the State party planned to prosecute the 11 former members of the defunct paramilitary group the "Junglers" that it was holding in custody. He would also be grateful for information on the potential prosecution of the former director of Mile Two Prison, David Colley. In addition, he would be grateful if the State party could clarify how it planned to make sure that the former president, Yahya Jammeh, was held accountable for his actions. He was also interested to know whether former members of the National Intelligence Agency, including its former director, would be prosecuted and whether the State party would introduce a vetting process for all new officers of its security forces.

8. The Committee would welcome an update on the investigation into the killing of 50 foreign nationals by the security forces in 2009. Furthermore, it would be useful if the State party could clarify whether it planned to conduct forensic investigations into recently discovered mass burial sites and whether the results of any investigations would be

submitted to the Truth, Reconciliation and Reparations Commission. He also wished to know whether anything had been done to improve prison conditions since the onset of the transition. In addition, he would appreciate confirmation that no one had been prosecuted under the State party's law prohibiting same-sex relationships and wished to know whether the Government planned to change that law.

9. Further information on the State party's position regarding the conflicting rulings of the Court of Justice of the Economic Community of West African States (ECOWAS) and the Supreme Court of the Gambia regarding its legal provisions on "false news" would be welcome. The Committee would also find it useful if the State party could explain why it had paid only half the indemnity it was ordered to pay to the families of Ebrima Manneh and Deyda Hydara by the Court of Justice of ECOWAS and clarify whether it had paid the full amount of the indemnity it owed Musa Saidykhan. Moreover, he wished to know whether an investigation was under way into the facts of Mr. Hydara's case. Additional details regarding the courts' backlog in criminal cases would be appreciated, including clarification as to whether the alternative dispute resolution mechanism mentioned in paragraph 23 of the State party's replies to the list of issues (CCPR/C/GMB/Q/2/Add.1) would be used in both criminal and civil cases.

10. Lastly, the Committee would be grateful for further information on the National Human Rights Commission, specifically regarding its secretariat, mandate, budget and the appointment of its commissioners. It would also be useful to know whether the new Inter-Ministerial National Taskforce was a standing body.

11. **Mr. Ben Achour** said that he wished to know what the exact mandate and functions of the Truth, Reconciliation and Reparations Commission were, how commissioners would be appointed and what resources would be allocated to it. It would also be useful to learn about the relationship between the Commission and the courts, with particular regard to the prosecution of perpetrators of human rights abuses. He would appreciate further details of the State party's plans to prosecute the perpetrators of human rights violations, including the murder of Ebrima Solo Sandeng in 2017.

12. It was unclear from the State party's definition of terrorism what differentiated terrorist crimes from crimes of ordinary law. Perhaps the distinction could be clarified if the definition were amended along the lines of the definition of terrorism contained in article 28 (g) of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, in which terrorist acts were defined by their intention.

13. **Mr. Politi** said that the Committee on the Elimination of All Forms of Discrimination against Women, in its concluding observations on the Gambia adopted in 2015 (CEDAW/C/GMB/CO/4-5), had denounced the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women in the family and society. He asked whether the activities of the National Women's Council had enhanced the status of women in political, social and economic life and had changed patriarchal attitudes and stereotypes regarding the role of women. He also wished to know whether the National Policy for the Advancement of Gambian Women 2010–2020 provided for measures to promote access to justice, equality before the law, protection against violence, the right to health and health-care services, and the rights of rural women. The delegation should provide information on the current ratio of women in the Cabinet and the National Assembly, in top diplomatic positions and among High Court judges, and clarify the statement in paragraph 45 of the State party's replies to the list of issues that "42 out of the total of 22 magistrates" were women. He would welcome information on the representation of women on the boards of directors of major private companies.

14. Additional information concerning the School Improvement Grant and the bursary scheme for girls would be welcome. He wished to know whether the annual increase of 5.5 per cent in the enrolment of girls in lower basic education between 2010 and 2015 was matched by effective attendance, and what were the corresponding statistics for secondary schools. More recent statistics on the enrolment of girls would be appreciated.

15. The Committee had been informed that, under sharia law, women could have access to land only through marriage, could not inherit land from their husbands and inherited a lower proportion of other assets than men. Those discriminatory rules had reportedly been

codified in the Women's Act of 2010. He would be grateful for confirmation of that report and for information about other provisions of the Act that could have a substantial impact on women's status. Had any action been taken to repeal those provisions and to ensure that the principle of equality between men and women enshrined in the Constitution was strictly enforced?

16. According to a survey conducted by the United Nations Children's Fund (UNICEF) in 2010, 8.6 per cent of Gambian girls married before attaining the age of 15 years and 46.5 per cent before the age of 18. Referring to the End Child Marriage campaign launched by the Ministry of Health and Social Welfare in 2016 and to the Children's (Amendment) Act 2016, which criminalized child marriage and defined children as persons under the age of 18, he asked whether the Act was strictly enforced throughout the country. He also wished to know what other measures had been taken to combat the persistent practices of levirate and polygamy. The delegation should provide child marriage statistics for the previous five years, as well as updated statistics regarding ethnic groups that practised polygamy, the proportion of the total population concerned, and the number of prosecutions and convictions for early marriage.

17. **Mr. Koita** asked what results had been achieved by the Missing Persons Task Force and the Truth, Reconciliation and Reparations Commission, which were mandated to investigate human rights violations committed between July 1994 and January 2017, and what constraints restricted their capacity to bring perpetrators to justice within a reasonable period and to compensate victims.

18. While the Government seemed to be committed to ensuring accountability, the police were reportedly still influenced to some extent by the mentality of impunity that had existed during President Jammeh's term of office. For instance, they had dispersed and arrested peaceful demonstrators or activists who had criticized President Barrow. Two demonstrators had been shot dead by the police in Faraba Banta village on 18 June 2018, although the members of the Police Intervention Unit had not been authorized to use live ammunition. He asked whether the Government had fulfilled its promise to conduct an independent investigation into the incident. He also wished to know whether steps had been taken to retrain the police and other law enforcement officials and to raise awareness of their responsibility to respect and protect citizens' rights.

19. According to several sources, including the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/29/37/Add.2), a number of persons had been detained, tortured, disappeared or even executed by the National Intelligence Agency. There had apparently been no prosecutions of law enforcement officials in 2016, primarily because the Indemnity Amendment Act, 2001, permitted the President to prevent prosecutions for acts committed during a state of emergency or an unlawful assembly. The Special Rapporteur had received reports of rampant impunity for extrajudicial executions and unlawful killings of persons deemed to be opponents of or a threat to the regime. He asked whether the Government had investigated the death of 50 foreign nationals, including 44 Ghanaians, who had been intercepted by the security forces on suspicion of planning to overthrow the Government. He also asked whether there had been an investigation into the secret detention in 2009 of over 1,000 residents of the Foni Kansala district as part of a witch-hunting campaign supported by members of the President's personal guard, the Green Boys, the National Intelligence Agency and soldiers.

20. He asked whether the Government planned to amend the provisions of the Constitution that set the threshold for the use of force excessively low. The Special Rapporteur had also recommended that the Government ensure: that all norms and regulations on the use of force by law enforcement officials complied with international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; that any use of force by law enforcement officials was proportionate and necessary in view of the threat posed; and that all cases of extrajudicial, summary or arbitrary execution, enforced disappearance, arbitrary detention and torture or ill-treatment were investigated, that the perpetrators were brought to justice, and that full reparation was provided to the victims and their families.

21. The State party should take urgent action to align its legislation with international norms, especially those relating to the use of firearms by law enforcement officials.

22. He welcomed the announcement of a moratorium on the death penalty and plans to amend the Constitution with a view to abolition of that penalty.

23. **Ms. Waterval** said that, despite the enactment in 2013 of both the Domestic Violence Act and the Sexual Offences Act, the State party in its replies to the list of issues had stated that no data had yet been compiled concerning complaints lodged by victims of domestic violence. However, a list had been provided of the number of cases of gender-based violence in recent years. She asked how the list had been complied in the absence of complaints, and what action had been taken against the perpetrators.

24. Furthermore, the State party had noted that the provision for compensation of victims under the Domestic Violence Act had not yet entered into effect and that no temporary restraining orders had been issued. However, the Act provided for protection orders, pursuant to which victims could remain in their place of residence without the perpetrator. She asked whether steps were taken to rehabilitate perpetrators so that they could return to their family, and whether the State provided support for victims who remained at home with their children.

25. She asked at what age girls were exposed to female genital mutilation (FGM). The legislation prohibiting FGM was of great importance but it was also essential to promote awareness-raising campaigns, especially for practitioners, who were in some cases family members.

26. **Mr. Muhumuza** said that he would appreciate data concerning infant and maternal mortality rates for the period between 2013 and 2015. While the number of women who had died as a result of complications during pregnancy and childbearing had declined between 1990 and 2013, a slight increase had been recorded from 2010. The delegation should provide a detailed explanation of the grounds for that increase and a description of the measures being taken to reverse the trend. The Committee would also appreciate information on the extent to which the nature of the legal regime applicable to abortion contributed to the maternal mortality rate.

*The meeting was suspended at 4.20 p.m. and resumed at 4.45 p.m.*

27. **Mr. Marenah** (Gambia) said that, given the calibre of the members of the Constitutional Review Commission, he was confident that the rights enshrined in the Covenant would be reflected in the new constitution that the Commission had been mandated to draft. The Government had decided not to amend the current constitution to abolish the death penalty because, as had been noted, the Constitution was shortly to be replaced. The international instruments to which the Gambia was a party were not currently recognized as domestic law without legislation specifically making them part of the domestic legal framework. The members of the Review Commission would decide whether, under the new constitution, the country's ratification of an international instrument automatically gave it the force of law.

28. Members of the paramilitary group known as the Jungulers were set to appear before the Truth, Reconciliation and Reparations Commission. All indications were that they were willing to testify. The Government would decide whether to prosecute them after they had testified. Prosecuting them before they had offered their testimony was likely to cause them to withhold vital information.

29. Prosecuting the exiled former President was not a priority, as the Gambia was going through a difficult transition and bringing him back to a country where he still had some support would be imprudent. A prosecution could be attempted once all the necessary information had been obtained by the Truth, Reconciliation and Reparations Commission. As Committee members perhaps knew, a number of human rights bodies had attempted to persuade third countries — Ghana, for example — to prosecute the former President for the killings of their nationals in the Gambia.

30. Exhumations at burial sites had been conducted in 2017 after the new Government had come to power but, as the country lacked forensic capacity, identification of the

remains had been a slow process. Exhumations had therefore been put on hold. The assistance of international partners had nonetheless made it possible to identify the remains exhumed in 2017.

31. The Supreme Court had upheld the constitutionality of the law prohibiting the spreading of "false news" about the Government or public officials. The aim of the proposed reform of the country's criminal justice system, however, including the Criminal Code and offences related to media practices, was to bring the country's criminal laws into line with international standards. That reform, combined with the work of the Constitutional Review Commission, would, it was hoped, lead to the removal of all laws inimical to freedom of expression from the country's statute books.

32. The Government had undertaken to award the monetary compensation that the Court of Justice of ECOWAS had ordered in a number of cases concerning the Gambia. Because of an ongoing financial crisis, however, only half the amounts awarded had been paid. The outstanding balance would be paid by the end of 2018. Musa Saidykhan, the complainant in one of those cases, had not received the compensation he had been awarded by the Court because, holding out for payment in full, he had rejected the Government's offer of a down payment. Investigations of all the human rights violations that had occurred under the previous regime, including those alleged by the family of the late Deyda Hydara, were to be overseen by the Truth, Reconciliation and Reparations Commission.

33. In a break with traditional practice and as part of efforts to reduce the backlog of cases in the country's courts, every chamber of the country's High Court had been required to hear criminal cases. Alternative dispute resolution was a process available only to civil litigants, not to persons involved in criminal matters, and it was increasingly resorted to, in particular for family matters, disputes over property rights and the like.

34. A number of applications for membership of the National Human Rights Commission, which had been established by the National Human Rights Commission Act of December 2017, had been received. The vetting and interviewing of applicants was scheduled to take place in the coming months. The Commission, which would have powers of investigation, was expected to be operational by the fourth quarter of 2018. In line with the Paris Principles, the Commission would operate with financial independence. Its budget would be set by the National Assembly rather than by the Ministry of Justice or any other ministry.

35. The Inter-ministerial National Task Force that met to prepare the reports that the Gambia submitted to the human rights treaty bodies was a permanent but not fully autonomous body. The members of the Task Force included government officials and representatives of non-governmental organizations. One of its aims was to ensure that the long delays in the submission of the country's reports would become a thing of the past.

36. It was highly unlikely that the provisions of the current Constitution, under which members of the Armed Forces Provisional Ruling Council, the former military junta, enjoyed immunity for a number of crimes, would be replicated in the new constitution. The process of appointing the members of the Truth, Reconciliation and Reparations Commission, on which each of the country's first-level administrative divisions would be represented, had been made as transparent as possible. Commission members not representing their administrative divisions would be appointed by the President in consultation with such institutions as the Gambia Bar Association and the National Women's Council. The Government could not fund the operation of the Commission alone, but it was receiving considerable support from a number of partners, including the United Nations.

37. The Commission, a fact-finding body, would have the power to recommend prosecution of the persons who appeared before it. Once such a recommendation was made, the courts would take over. Channels of communication would be established between the Commission and the justice system, and the evidence obtained by the Commission would be admissible in court.

38. Nine senior members of the country's former intelligence agency had been charged in connection with the murder of Ebrima Solo Sandeng. The trial, which was proceeding apace, was expected to conclude by the end of the year.

39. He would welcome a clarification of the Committee's concerns about the definition of terrorism in section 2 of the Anti-Terrorism Act of 2002. Those concerns, if communicated more clearly, could be addressed as part of the planned reform of the system of criminal justice in the Gambia.

40. It was clearly not true that, as mistakenly stated in paragraph 45 of the State party's replies to the list of issues, 42 of the country's 22 lower-court judges were women; the correct figures were 22 out of 42. Three of the five members of the Court of Appeal, including the President, were women, as was one Supreme Court justice.

41. Gambian women could and often did own land. It was not the case that under sharia law they could acquire land only through marriage. The amendment to the Children's Act 2005 that had made child marriage a crime was in force, but enforcement was a challenge, particularly in a Muslim country where girls had traditionally been deemed marriageable once they reached puberty. Encouraging children to continue their studies through secondary school — which they usually finished at around the age of 18 years — was among the most effective means of combating child marriage.

42. In relation to cases of disappeared persons, the Truth, Reconciliation and Reparations Commission was examining all reports, making enquiries and seeking to ensure that the perpetrators were held criminally responsible for their actions.

43. Enforcing the prohibition of FGM was highly challenging because of the deep cultural roots of the practice. Communities were strongly reluctant to report cases, particularly given that circumcisions were often performed by close relatives, such as grandmothers. In the one case that had found its way to the courts, no family member had been willing to testify and the charges had eventually been dropped. Nevertheless, FGM was almost never practised among the educated population, and in communities where it was still practised, sensitization campaigns carried out by State and non-State actors had led to a decline in its prevalence. The Gambian authorities were therefore confident that further sensitization would be the most effective way to eliminate the practice over time.

44. **Mr. Barry** (Gambia) said that the Government had shared the latest data on maternal and infant mortality processed by the Demographic and Health Survey 2013. As the survey was carried out every five years, the Gambia Bureau of Statistics was currently working with the Ministry of Health and Social Welfare and other stakeholders to compile and verify the data for 2018.

45. The rise in maternal mortality between 2010 and 2013 was most likely attributable to several factors. First, the limited budget allocated by the Government of the time to maternal and reproductive health had made it impossible to curb the number of deaths and had created dependency on donors such as the United Nations Population Fund (UNFPA). Secondly, the fertility rate in the Gambia remained very high, at 177 per 1,000 women of childbearing age. Thirdly, the intermittent supply of medical supplies and biomedical equipment meant that emergency interventions for women were not always possible. According to World Population Prospects, skilled attendance at birth stood at 60 per cent coverage in 2015, which was lower than projected.

46. As the high birth rate complicated efforts to reduce maternal mortality, UNFPA, in collaboration with the Government, had been working to promote the use of contraceptives and birth spacing. In addition, the World Bank had been supporting the Government to create a results-based financing strategy, in order to enable skilled attendants to provide contraceptives to more families. However, progress had been hampered by strong cultural resistance to contraceptives in many rural communities.

47. As abortions were often privately conducted, official statistics on deaths resulting from terminations of pregnancies were not available. However, the Government would consult other stakeholders to see if any data on abortions could be obtained and shared.

48. **Ms. Jaiteh** (Gambia) said that the education sector followed a policy of providing accessible, equitable, inclusive, quality education for sustainable development. The recently introduced School Improvement Grant was calculated on the basis of the enrolment rate of the school and ensured that public basic and secondary education was free of charge. In order to guarantee accountability for school funding, the Government had strengthened the necessary structures for allocation and procurement.

49. A gender equity initiative had been launched in 2001 to provide training to teachers and carry out sensitization campaigns in communities. Textbooks had been revised to conform to a gender-sensitive approach. Gender disparities had been eliminated from the overall enrolment rate at preschool, primary and secondary levels of education. Nevertheless, high rates of absenteeism and dropout among girls in some regions often stemmed from cultural traditions and beliefs. In order to ensure that no one was left behind, the sector ran entry-level programmes for girls who had dropped out of school, with a strong focus on reaching girls in poor regions. With the support of the World Bank, a "second chance" education initiative had been launched, and opportunities were being provided to girls and boys outside the conventional educational system in order to help them acquire lifelong skills.

50. **Mr. Sonko** (Gambia) said that 58 per cent of Gambian registered voters were female. Women accounted for 6 of 48 members of the National Assembly, 8 of 20 judges, 22 of 42 magistrates and 4 of 20 Cabinet members. Six (of 23) ambassadors in diplomatic missions were women. Although the Government had yet to obtain comprehensive data on the number of women on boards of directors in public and private enterprises, efforts to ensure at least 30 per cent female representation were ongoing as part of the process of constitutional reform.

51. **Mr. Dibba** (Gambia) said that the current dialogue between the delegation and the Committee would not have been possible two years earlier. Since then, Gambians had voted for democracy, and yet that long-awaited democracy posed its own challenges.

52. The Faraba Banta incident of June 2018 had been unexpected and was highly regrettable. An independent investigation into the incident would be launched and its findings made public.

53. After emerging from a long dictatorship, the Gambia had radically changed its law enforcement priorities. The responsibility for domestic security had shifted from the army to the police. Following a comprehensive review that had uncovered gross human rights violations, the new Government had decided to reform the entire security sector. A human rights unit had been established under the Ministry of the Interior, and a crime coordination unit had been set up to provide intelligence for dealing with human rights issues. For the first time, a security adviser had been appointed to the Office of the Minister, along with a technical adviser for policy reform. A zero-tolerance attitude to torture, arbitrary arrest and arbitrary detention would henceforth be observed. A Police Council had been established to examine the affairs of the law enforcement agencies, and a sensitization campaign had been launched to improve relations between the general public and the police.

54. There were no more political prisoners in the Gambia, and the overall prison population had been reduced by almost 50 per cent. The standard of the food served had improved significantly. A Prison Council had been established, in addition to a prison committee, which would review conditions of detention and the outdated Prison Act. A site for the construction of a modern prison had been secured, and the designs would be reviewed to ensure that they were in conformity with international standards. Provision was being made for prisoners to acquire technical skills and undergo training while in detention.

55. **Ms. Waterval**, noting that paragraph 68 of the State party's replies to the list of issues mentioned 589 cases of sexual violence between 2013 and 2017, asked how many prosecutions had taken place in relation to those crimes.

56. **Mr. Politi** said that he wished to know whether any provisions that discriminated against women remained in Gambian legislation and, if so, what affirmative action was envisaged to repeal or amend them. While he welcomed the progress made in relation to the enrolment of girls in schools, literacy levels were distinct from enrolment levels. He would

therefore welcome information on what was being done to address illiteracy among girls, particularly those in rural communities.

57. **Mr. Heyns** asked whether the Government had set a time frame for its ratification of the Second Optional Protocol to the Covenant. He would welcome further information on the status of international law under the Constitution, particularly whether the courts were required to take international law into consideration when interpreting national laws. It was unclear whether the Truth, Reconciliation and Reparations Commission would have the power to grant amnesty. Lastly, the Constitution provided an extremely broad basis for the use of force and seemed to grant a licence to kill, provided that the force used was reasonably justifiable. He would appreciate indications from the delegation about how the Government planned to address that core issue.

58. **Ms. Cleveland** asked whether any prosecutions under the prohibition on child marriage had taken place. She wondered whether the Government collected statistics on child marriages and cases of FGM. Furthermore, she would be interested to hear how many people had been reached through the awareness-raising efforts mentioned by the delegation in those two areas. It would be useful to know whether Gambian legislation allowed for legal abortions in exceptional cases, such as rape or incest. Lastly, she asked whether women who presented at Gambian hospitals with complications resulting from unlawful abortions were given medical care, and whether they were prosecuted.

59. **The Chair** said that, in relation to the definition of terrorism provided by the delegation, he would welcome further information on how the provision that alluded to prejudice to public security or national defence was interpreted in practice.

*The meeting rose at 6.05 p.m.*